

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JENNIFER HARBERS,
for Herself, as a Private Attorney
General, and/or On Behalf Of All
Others Similarly Situated,

Plaintiff,

v.

EDDIE BAUER LLC,
and DOES 1-20, inclusive,

Defendants.

No. 2:19-cv-00968-JLR

**STIPULATED MOTION AND
~~PROPOSED~~ ORDER RE:
BRIEFING SCHEDULE FOR
DEFENDANT'S MOTION TO
DISMISS**

NOTE ON MOTION CALENDAR:
TUESDAY, JULY 9, 2019

STIPULATION

WHEREAS, on May 20, 2019, Plaintiff Jennifer Harbers ("Plaintiff" or "Harbers") filed this civil action in the Superior Court of King County, Washington, and, on June 12, 2019, filed her operative First Amended Complaint in the Superior Court of King County, Washington;

WHEREAS, on June 21, 2019, Defendant Eddie Bauer LLC ("Defendant" or "Eddie Bauer") removed this civil action to the U.S. District Court for the Western District of Washington [*see* Notice of Removal (Dkt. 1)];

WHEREAS, on June 28, 2019, Defendant Eddie Bauer filed a Motion To Dismiss the First Amended Complaint on the grounds that it failed to state a claim upon which relief can be granted [*see* Motion to Dismiss First Amended Complaint (Dkt. 11)];

STIP. MOT. AND ORDER RE:
BRIEFING SCHED. FOR MOT. TO DISMISS - 1
19-CV-00968-JLR

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1 WHEREAS, the Motion To Dismiss has a noting date of Friday, July 26, 2019, which
2 would require Plaintiff Harbers to file and serve her opposition on or before Monday, July 22,
3 2019 [LCR 7(d)(3)];

4 WHEREAS, on July 4, 2019, Plaintiff Harbers filed a Motion To Remand, arguing that
5 this Court lacks subject matter jurisdiction on the grounds that the First Amended Complaint
6 does not allege an injury-in-fact sufficiently concrete to provide Article III standing [*see*
7 Motion To Remand (Dkt. 13)];

8 WHEREAS, the Motion To Remand has a noting date and a briefing schedule identical
9 to that of the Motion to Dismiss, *i.e.*, a noting date of Friday, July 26, 2019, which would
10 require Defendant Eddie Bauer to file and serve its opposition on or before Monday, July 22,
11 2019 [LCR 7(d)(3)];

12 WHEREAS, judicial and party resources would be conserved if the Court ruled on the
13 Motion To Remand before the parties were required to file and serve an opposition and a reply
14 to the Motion To Dismiss;

15 WHEREAS, a ruling on the subject matter jurisdiction challenge in the Motion To
16 Remand must precede a ruling on the sufficiency of the allegations of the First Amended
17 Complaint, *i.e.*, “[b]efore the Court decides whether any deficiency in Plaintiff’s Complaint
18 warrants dismissal, the Court must decide whether it has jurisdiction over Plaintiff’s claims,”
19 *Tate v. Fresenius USA, Inc.*, 2013 WL 12133850, *3 (C.D. Cal. Sept. 4, 2013), and “a federal
20 court must remand for lack of subject matter jurisdiction notwithstanding the presence of other
21 motions pending before the court,” *University of South Alabama v. American Tobacco Co.*, 168
22 F.3d 405, 411 (11th Cir. 1999), and “[a]ny order remanding for lack of subject matter
23 jurisdiction necessarily denies all other pending motions,” *Dahiya v. Talmidge Intern., Ltd.*,
24 371 F.3d 207, 210 (5th Cir. 2004);

25 NOW, THEREFORE, PLAINTIFF JENNIFER HARBERS AND DEFENDANT
26 EDDIE BAUER LLC HEREBY STIPULATE AND AGREE AS FOLLOWS:

27 The noting date on Defendant’s Motion To Dismiss should be vacated. In the event that
28 this Court denies Plaintiff’s Motion To Remand, Defendant’s Motion To Dismiss should be set

1 for that noting date which is the sixth Friday following the date of entry of the order denying
2 the Motion To Remand ("order"); notwithstanding Local Civil Rule 7(d)(3), Plaintiff's
3 Opposition should be due twenty-one (21) days after the entry of the Court's order, and
4 Defendant's Reply brief should be due fourteen (14) days after the filing and service of
5 Plaintiff's Opposition.

6 DATED this 9th day of July, 2019.

7
8 HATTIS & LUKACS

SEED IP LAW GROUP LLP

9
10 By: /s/ Daniel M. Hattis
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By: /s/ Marc C. Levy
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15 Attorneys for Plaintiff Jennifer Harbers
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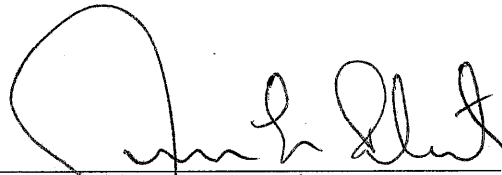
19 Attorneys for Defendant Eddie Bauer LLC

ORDER

Based on the foregoing Stipulated Motion of the parties and good cause shown, IT IS SO ORDERED that:

The noting date on Defendant's Motion To Dismiss (Dkt. 11) is hereby vacated. In the event that this Court denies Plaintiff's Motion To Remand, Defendant's Motion To Dismiss is hereby set for that noting date which is the sixth Friday following the date of entry of the order denying the Motion To Remand ("order"); notwithstanding Local Civil Rule 7(d)(3), Plaintiff's Opposition shall be due twenty-one (21) days after the entry of the Court's order, and Defendant's Reply brief shall be due fourteen (14) days after the filing and service of Plaintiff's Opposition.

DATED this th10 day of July, 2019.


The Honorable James L. Robart
United States District Court Judge